

08 CV 6948

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FEDERAL INSURANCE COMPANY, :

Plaintiff, :

- against - :

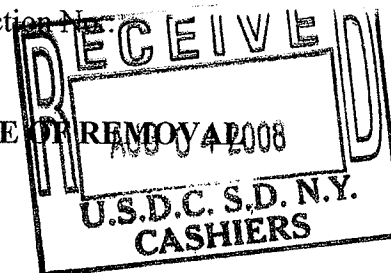
BRITISH AIRWAYS PLC, :

Defendant. :

-----X

Civil Action No. :

NOTICE OF REMOVAL 2008



Pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, defendant BRITISH AIRWAYS PLC ("BRITISH AIRWAYS"), by and through its attorneys Clyde & Co US LLP, files this Notice of Removal seeking removal of the above-entitled civil action from the Civil Court of the State of New York, County of New York, bearing Case Index No. 040963/2008, to the United States District Court for the Southern District of New York based upon federal question jurisdiction under 28 U.S.C. § 1331. In support of the removal, defendant states as follows:

1. This action was commenced against BRITISH AIRWAYS in the Civil Court of the State of New York, County of New York, by filing of a Summons with Indorsed Complaint ("Complaint") on or about June 27, 2008. The Complaint was personally served on BRITISH AIRWAYS on July 14, 2008. A copy of the Complaint is annexed hereto as Exhibit "A." No further proceedings have occurred in the action.

2. This Notice of Removal is timely filed with this Court, pursuant to 28 U.S.C. § 1446(b), within thirty (30) days after service on BRITISH AIRWAYS of plaintiff's Complaint.

3. The Complaint seeks \$6,931.05 in damages for non-delivery of a cargo shipment of rotors in March 2007 from Atlanta to Cairo, Egypt.

4. Based upon the allegations in the Complaint, this Court, upon information and belief, has original jurisdiction over this action because of the existence of a federal question pursuant to 28 U.S.C. § 1331 and the action is one that may be removed pursuant to 28 U.S.C. § 1441. The transportation out of which the subject matter of this action arose was “international transportation” within the meaning of the Convention for the Unification of Certain Rules for International Carriage by Air, Done at Montreal on 28 May 1999 (“Montreal Convention”), *reprinted in* S. Treaty Doc. 106-45, CCH Av. L. Rep. ¶ 27,400-59, 1999 WL 33292734, and the rights of the parties are governed by the provisions of the Montreal Convention. Accordingly, the underlying action may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. § 1331(b) as the action is governed exclusively by a treaty of the United States, the Montreal Convention. *See El Al Israel Airlines, Ltd. v. Tseng*, 525 U.S. 155, 167-69 (1999).

5. The United States District Court for the Southern District of New York is the proper venue for removal of this action because it is the district in which the state court action is pending. *See* 28 U.S.C. § 1446(a).

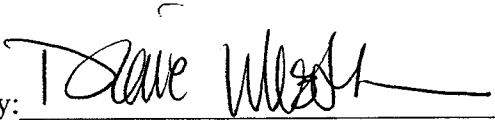
6. Concurrently with the filing of this Notice, BRITISH AIRWAYS is giving notice of removal to plaintiff, and is filing a copy of this Notice with the Clerk of Court of the Civil Court of the State of New York, County of New York. A copy of the Notice of Filing Notice of Removal is attached hereto as Exhibit “B.”

WHEREFORE, defendant BRITISH AIRWAYS PLC, having complied with the requirements of 28 U.S.C. §§ 1331, 1441 and 1446, requests that this action now pending in the Civil Court of the State of New York, County of New York, proceed in this Court as an action properly removed to it.

Dated: New York, New York  
August 4, 2008

Yours, etc.,

CLYDE & CO US LLP

By: 

Diane Westwood Wilson (DW 0520)

Attorneys for Defendant  
BRITISH AIRWAYS PLC  
The Chrysler Building  
405 Lexington Avenue  
New York, New York 10174  
(212) 710-3900

To: Harold Kingsley, Esq.  
KINGSLEY, KINGSLEY & CALKINS  
Attorneys for Plaintiff  
91 West Cherry Street  
Hicksville, New York 11801  
(516) 931-0064

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK     )  
                                      ) ss.:  
COUNTY OF NEW YORK    )

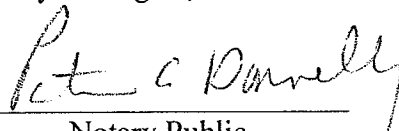
Kristi Allan, being duly sworn, deposes and says that deponent is not a party of this action, is over 18 years of age and resides in Weehawken, New Jersey. On August 4, 2008 deponent served the within **NOTICE OF REMOVAL** upon:

Harold Kingsley, Esq.  
KINGSLEY, KINGLSY & CALKINS  
Attorney for Plaintiff  
91 West Cherry Street  
Hicksville, New York, 11801

The address(es) designated by said attorney(s) for that purpose by depositing a true copy thereof enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

  
\_\_\_\_\_  
Kristi Allan

Sworn to before me this  
4<sup>th</sup> day of August, 2008

  
\_\_\_\_\_  
Notary Public

PATRICIA A. DONNELLY  
Notary Public, State of New York  
No. 01DO5087441  
Qualified in New York County  
Commission Expires Nov. 30, 2009

**Exhibit A**

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK

-----X  
FEDERAL INSURANCE COMPANY

-Index No. **040963 2008**

**SUMMONS**

Plaintiff,

-against

Plaintiff's Residence:  
Address: 55 Water Street  
New York, NY 10041

BRITISH AIRWAYS PLC

The basis of the venue designated is:  
Plaintiff's Residence

Defendant

-----X  
To the above named defendant(s):

**YOU ARE HEREBY SUMMONED** to appear in the Civil Court of the City of New York, County of New York, at the office of the Clerk of the said Court at 111 Centre Street, in the County of New York, City and State of New York, within the time provided by law as noted below and to file your answer to the endorsed summons with the Clerk; upon your failure to answer, judgment will be taken against you for the sum of \$6,931.05 with interest thereon from the 20th day of March, 2007, together with the costs of this action.

Dated: June 20, 2008

KINGSLEY, KINGSLEY & CALKINS

Defendant's Address:

BRITISH AIRWAYS PLC  
75-20 Astoria Blvd.  
Jackson Heights, NY 11370  
Ref: MJS/2006AWB6530

**FILED**  
JUN 27 2008  
NEW YORK COUNTY  
CIVIL COURT

HAROLD M. KINGSLEY  
91 West Cherry Street  
Hicksville, NY 11801  
(516) 931-0064

NOTE: The law provides that:

(a) If this summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such services; or

(b) If this summons is served by delivery to any person other than you personally, or is served outside the City of New York, or by publication, or by any means other than personal delivery to you within the City of New York, you are allowed THIRTY days after the proof of service thereof is filed with the Clerk of this Court within which to appear and answer.

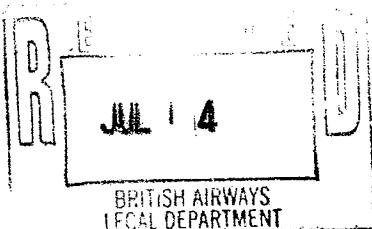
**INDORSED COMPLAINT**

A statement of the nature and substance of the plaintiff's cause of action is as follows:

Nondelivery of a shipment of rotars moving from Atlanta, GA, to Cairo, while being transported by British Airways as described in MAWB# 125-15076530, dated March 20, 2007.

Kingsley, Kingsley & Calkins  
Attorneys for Plaintiff

CH7946/HMK/



7/14/08 4:20 PM  
by Hand

Exhibit B

CIVIL COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

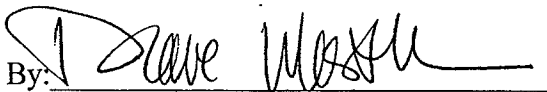
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- against -	:
	<b>NOTICE OF FILING</b>
	<b>NOTICE OF REMOVAL</b>
BRITISH AIRWAYS PLC,	:
Defendant.	:
-----X	

PLEASE TAKE NOTICE that pursuant to the provisions of 28 U.S.C. §§ 1441 and 1446, defendant BRITISH AIRWAYS PLC, filed its Notice of Removal of this action to the United States District Court for the Southern District of New York on August 4, 2008. A copy of the Notice of Removal is attached hereto as Exhibit "A."

Dated: New York, New York  
August 4, 2008

Yours, etc.,

CLYDE & CO US LLP

By: 

Diane Westwood Wilson

Attorneys for Defendant  
BRITISH AIRWAYS PLC  
The Chrysler Building  
405 Lexington Avenue  
New York, New York 10174  
(212) 710-3900



To: Harold Kingsley, Esq.  
KINGSLEY, KINGSLEY & CALKINS  
Attorneys for Plaintiff  
91 West Cherry Street  
Hicksville, New York 11801  
(516) 931-0064

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK     )  
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Harold Kingsley, Esq.  
KINGSLEY, KINGLSY & CALKINS  
Attorney for Plaintiff  
91 West Cherry Street  
Hicksville, New York, 11801

The address(es) designated by said attorney(s) for that purpose by depositing a true copy thereof enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

  
\_\_\_\_\_  
Kristi Allan

Sworn to before me this  
4<sup>th</sup> day of August, 2008

  
\_\_\_\_\_  
Notary Public

**ANDREA M. LLOYD**  
**Notary Public, State of New York**  
**No. 02LL6144061**  
**Qualified in New York County**  
**Commission Expires April 24, 2010**